

**PLACER COUNTY SUPERIOR COURT  
THURSDAY, CIVIL LAW AND MOTION  
DEPARTMENT 42  
THE HONORABLE CHARLES D. WACHOB  
TENTATIVE RULINGS FOR MARCH 12, 2020 AT 8:30 A.M.**

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These are the tentative rulings for the **THURSDAY, MARCH 12, 2020 at 8:30 A.M.**, civil law and motion calendar. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., WEDNESDAY, MARCH 11, 2020**. Notice of request for argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date and approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

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**NOTE: Effective July 1, 2014, all telephonic appearances will be governed by Placer Court Local Rule 20.8. More information is available at the court's website: [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

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Except as otherwise noted, these tentative rulings are issued by the **HONORABLE CHARLES D. WACHOB** and if oral argument is requested, oral argument will be heard at **8:30 a.m.** in **DEPARTMENT 42**, located at 10820 Justice Center Drive, Roseville, California.

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**1. M-CV-0072516 WELLS FARGO v. FRAZER, STEPHANIE**

The motion for summary judgment/summary adjudication is dropped from the calendar. A dismissal order was entered on February 7, 2020.

**2. M-CV-0074612 MTGLQ INVESTORS v. LADD, DARREN**

The appearances of the parties are required for the hearing on plaintiff's motion for summary judgment.

**3. S-CV-0039740 CARLSON, DON v. COLDWELL SOLAR**

This tentative ruling is issued by the Honorable Michael W. Jones. Oral argument shall be heard on Thursday, March 12, 2020 at 8:30 a.m. in Department 3, located at the Historic Auburn Courthouse:

The appearances of the parties are required for the review hearing regarding entry of judgment.

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**4. S-CV-0040037 KIIHNE, MEGAN v. NBTY, INC**

The joint motion to dismiss individual claims and class action claims is granted. (California Rules of Court, Rule 3.770.) The first amended class action complaint, filed on November 26, 2018, is dismissed without prejudice with no further notice required to the putative class members. (Ibid.) Plaintiff's individual claims are dismissed with prejudice.

**5. S-CV-0040270 FIELD SUPPLY v. FIELD JONATHAN**

The motion for summary judgment/summary adjudication is continued to Thursday, April 9, 2020 at 8:30 a.m. in Department 42. The court apologizes to the parties for any inconvenience.

**6. S-CV-0040924 DUNN, IDELLE v. CAMERON PARK SENIOR LIVING**

Plaintiff counsel's motion for appointment of guardian ad litem (GAL) is denied without prejudice. In the current request, counsel for plaintiff Idelle Dunn seeks appointment of a GAL based upon alleged conflicts of interest and undue influence arising from the actions of Ms. Dunn's adult daughter. The appointment of a GAL may occur for an adult that lacks legal capacity. (Code of Civil Procedure section 372(a); Probate Code section 812.) Absent consent, the court has no authority to appoint a GAL for a person that has capacity. (Probate Code section 812.) When considering whether a party has capacity, the court looks to whether the party is able to communicate, understand and appreciate the nature of the proceedings. (Ibid; see also *In re Jessica G.* (2001) 93 Cal.App.4th 1180, 1187-1188.) The court has carefully reviewed the briefing of the parties, and specifically Ms. Dunn's deposition transcript excerpts. Contrary to counsel's assertions, the transcript excerpts demonstrate Ms. Dunn has an acute awareness and understanding of the impact of her decisions. The court cannot determine Ms. Dunn lacks legal capacity to warrant the appointment of a GAL at this juncture. For these reasons, the motion is denied.

**7. S-CV-0041450 FOLADRAY, MAHIN v. KHODAMARDI, GITI**

Daryl Lander's motion to be relieved as counsel for plaintiff Mahin Foladray is denied without prejudice. Mr. Lander did not file a noticed motion [mandatory Judicial Council form no. MC-051], submitting only a declaration. A noticed motion must be properly filed and served before the court can consider the relief

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sought by counsel. (Code of Civil Procedure section 284; California Rules of Court, Rule 3.1362.)

**8. S-CV-0041478 CARL, MARLIN B. V. CARL, MARLIN, LEE**

Defendant's motion to compel responses to discovery is granted. Plaintiff Marlin B. Carl shall provide verified responses and responsive documents, without objections, to form interrogatories, set one; special interrogatories, set one; and request for production of documents, set one, by March 27, 2020. Sanctions are denied at this time as the motion was not opposed. (Code of Civil Procedure sections 2030.290(c), 2031.300(c).) However, repeated conduct of failing to comply with discovery obligations may lead the court to find an abuse of the discovery process and award sanctions on that basis. (*Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4.)

**9. S-CV-0041488 BOSLEY, CHRISTINE v. EUROMOTORS ROCKLIN**

The motion for summary judgment/summary adjudication is continued to Thursday, March 19, 2020 at 8:30 a.m. in Department 42. The court apologizes to the parties for any inconvenience.

**10. S-CV-0041771 PETERSEN, HEATHER v. REY, DAVID**

This tentative ruling is issued by the Honorable Michael W. Jones. Oral argument shall be heard on Thursday, March 12, 2020 at 8:30 a.m. in Department 3, located at the Historic Auburn Courthouse:

The appearances of the parties are required for the OSC hearing re status of arbitration.

**11. S-CV-0041782 LEYVA, YESENIA v. GENERAL MOTORS**

Plaintiffs' motion to compel compliance with October 3, 2019 order is dropped from the calendar. Plaintiffs filed a notice of withdrawal of the motion on March 5, 2020.

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**12. S-CV-0042658 LABEL, PATRICK v. BENTON, LORENZA**

Plaintiff's motion for order deeming admitted truth of facts is granted. The matters encompassed in request for admissions, sets one and two, are deemed admitted as to defendant Lorenza Benton.

**13. S-CV-0042732 VROEGE, ROBERT v. JONES, CHARLES**

Defendant Jason Jones' Demurrer to the Second Amended Complaint (SAC)

The demurrer is overruled. In the current demurrer, defendant challenges both the first and second causes of action. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The SAC, when read as a whole and deeming all allegations to be true, alleges sufficient allegations to support the two causes of action.

Defendant shall file and serve his answer or general denial by March 27, 2020.

**14. S-CV-0043170 PEOPLE EX REL v. DAY, JAMES**

Plaintiff's motion for order deeming admitted the truth of facts sought in request for admissions is granted. The matters encompassed in request for admissions, set one, two, and three, are deemed admitted as to defendants James Day, Barbara Day, and Mid Valley Consulting & General Engineering. Sanctions in the amount of \$800.00 are imposed on defendants James Day, Barbara Day, and Mid Valley Consulting & General Engineering. (Code of Civil Procedure section 2033.280(c).)

**15. S-CV-0043474 HANEY, ADAM v. CBRE, INC**

Defendant's demurrer is sustained with leave to amend. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A review of the allegations in

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the FAC shows that each cause of action is pleaded in a conclusory fashion, which is insufficient to support any of the claims. Since each of the three causes of action are deficiently pleaded, the demurrer is sustained in its entirety.

Plaintiff shall file and serve his second amended complaint by March 27, 2020.

**16. S-CV-0043926 RICK MARTIN CONST v. IRA SERVICES TRUST CO**

The motion regarding other pleading is dropped from the calendar as no moving papers were filed with the court.

Defendants' Motion to Expunge Lis Pendens

Preliminary Matters

Defendants' request for an evidentiary hearing and to require plaintiff's pre-hearing deposition is denied.

Ruling on Objections

Defendants' objections are sustained in their entirety.

Ruling on Motion

The motion is denied without prejudice. The current request comes before the court with a unique posture. The motion is aimed at the original notice of lis pendens and the original complaint, neither of which is operative at this juncture. Plaintiff filed an unverified first amended complaint on February 3, 2020, followed by an amended notice of lis pendens filed on February 28, 2020. To further complicate matters, defendants insist that the first amended complaint should not be considered and the motion should only take into account the original complaint.

The court declines to consider the substance of the motion at this juncture. An amended pleading supersedes the original which ceases to function as a pleading. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 884; see also *State Compensation Ins. Fund v. Superior Court* (2010) 184 Cal.App.4th 1124, 1130-1131 ["Because there is but one complaint in a civil action [citation], the filing of an amended complaint moots a motion directed to a prior complaint. [Citation.]".]) Both the lis pendens notice and the original complaint have been

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superseded by amendments. It would be improper for the court to make a substantive determination on a superseded complaint and a notice of lis pendens that is no longer operable. For these reasons, the motion is denied.

Both requests for attorneys' fees are also denied at this time.

**17. S-CV-0044148 TRI OUTDOOR PROP v. BABCOCK, LISLE**

The petition to compel arbitration is granted. There is a question as to whether Placer County is the proper venue for the petition. Respondents have specially appeared in the action contesting both the court's jurisdiction to hear the petition and venue. Contrary to respondents' assertions, any court within California may have jurisdiction to hear a petition to compel arbitration. (Code of Civil Procedure section 1292.) The court with jurisdiction includes (1) the county where the agreement was made or is to be performed; (2) the county where any party to the court proceeding resides or has a place of business; and (3) any county in the state. Petitioner's corporate headquarters are located in Placer County and petitioner executed the agreement in Placer County. These facts provide the court with both jurisdiction and venue over the current petition.

Turning to the substance of the request, a threshold question for any petition to compel arbitration is whether there exists an agreement to arbitrate. (*Cruise v. Kroger Co.* (2015) 233 Cal.App.4th 390, 396.) It is the moving party that carries this initial burden by proving, by a preponderance of the evidence, the existence of a valid arbitration agreement. (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972.) Petitioner has met its burden here. Petitioner has submitted sufficient evidence establishing the parties entered into a commercial income listing agreement, which included an arbitration provision.

With the existence of a valid arbitration agreement established, the next portion of the inquiry is whether the parties should be compelled to participate in arbitration. The court shall compel arbitration unless there is a showing that (1) the petitioner waived the right to arbitration; (2) grounds exist to revoke the agreement; or (3) there is a pending court action arising from the same transaction with a possibility of conflicting rulings on common issues of law. (Code of Civil Procedure section 1281.2.) Respondents have not made a sufficient showing of waiver, revocation, or the existence of a conflicting court action to challenge the validity of the arbitration provision. For these reasons, the petition is granted.

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**18. S-CV-0044274 ELGUINDY, MEYER & KOEGEL v. UMINA, LEONARD**

The demurrer is dropped from the calendar as no moving papers were filed with the court.